(1)

Supreme Court, U.S.
FILED

No. 971412 FEB 26 1998

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1997

DORIS MAHER

Petitioner

v.

LONG ISLAND UNIVERSITY: DAVID STEINBERG
WALTER JONES AND GEORGE SUTTON

On Petition For Writ Of Certiorari
To The United States Appeals Court For
The Second Circuit

PETITION FOR WRIT OF CERTIORARI

DORIS MAHER PRO SE
2337 MARLBORO STREET
EAST MEADOW, N.Y. 11554
516 781-6629

34 pp

Plaintiff's rights were lawfully denied for Trial By Jury, Equal Protection and Contract Clauses, and Due Process of law, violating the United States Constitution Amendments VII and XIV, Age Discrimination In Employment Act of 1967 ("ADEA") and Civil Rights Act of 1964 Title VII.

1. May demands for Trial By Jury lawfully denied after demanded to Court and Counsel before Hearing on Consent Award, Court Decision made on case, Court then-raised Question on Sex Discrimination in Complaint too late, excluded from Summary Order, unrelated to violations of Amendments VII and XIV?

2. May rights of Equal Protection, Contract Enforcement and Due Process lawfully denied, by enforcing only items eliminating senior from work force, in Consent Award, failed ADEA waiver, excluding items of economic gains and losses, material factors breached and defrauded allegedly, unrelated to violations of the Fourteenth Amendment?

TABLE OF CONTENTS

	PAGE
Questions Presented For Review....	i
Table of Authorities.....	iii
Citations of the Official and Unofficial Reports.....	1
Statement of Basis of Jurisdiction in Supreme Court.....	1
Citations of Statutes and U.S. Constitution Amendments....	2
Statement of the Case.....	3
Statement of the Facts.....	4
Reasons for Granting the Writ.....	8
Conclusion.....	29
Appendix (Special Booklet For U.S. Supreme Court).....A-1 through A-19	

TABLE OF AUTHORITES

STATUTES CITED

Age Discrimination In Employment Act (ADEA). 1967, 29 U.S.C. Sec. 621-634 2,8,9, 10,13,15,16,18,19,22,23,24,25

Equal Employment Opportunity Commission (EEOC)., 29 U.S.C. Sec. 626 4,5

Title VII Civil Rights Act 1964 42 U.S.C. Sec. 2000 et seq 2,8,9, 19,22,23,25

Title VII Civil Rights Act. 42 U.S.C. Sect. 2000e-5 2,9

Title VII Civil Rights Act. 42 U.S.C. Sect. 2000-5 (g) 2,9

The New York General Obligations Law. Sec. 15-501 (McKinney's 1989) 22,25

The United States Constitution, Amendments VII 2,8,12, 13,15,19,22

The United States Constitution, Amendment XIV 2,8,14, 15,19,22

The Federal Law (COBRA) Extend Medical Insurance to Discharged Employees 7,20

Booklet: AARP-The Age Discrimination in Employment Act Guarantees You Certain Rights. Washington, D.C. 24,25

CASES CITED

Argus Inc. v. Eastman Kodak Co., 801 F.2d 38,42 (2nd Cir. 1986) 15

Bormann v. AT&T Comminications, Inc., 875 F.2d 399, 401, 403 (2nd Cir. 1989), cert. denied, 493 U.S. 924 (1989) 13,15, 16,17

Cerbone v. International Garment Workers' Union, 768 F.2d 45, 49, 50 (2nd Cir. 1985) 18,19, 21

Cirillo v. Arco Chemical Co., 862 F.2d 448, 454 (3rd Cir. 1988) 13

Coventry v. United States Steel Corp., 856 F.2d 514 (3rd Cir. 1988) 13

Delaware State College v. Ricks, 499 U.S. 250, 101 S.Ct. 489 (1980) 16

Dillman v. Engineering, Inc., 784 F.2d 57 (2nd Cir. 1986) 25

Miller v. International Telephone and Telegraph Corp., 755 F.2d 20, 21 (2nd Cir. 1985) 18,21

Seedman v. Alexander's Inc., 683 F. Supp. 924, 926 (SDNY 1987) 18,19

Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 102 S.Ct. 1127 (1982) 14

OFFICIAL AND UNOFFICIAL REPORTS

United States Court Of Appeals For The Second Circuit Summary Order Filed December 2, 1997.

United States District Court Eastern District Of New York Judgment Filed July 29, 1996.

United States District Court Eastern District Of New York Transcript Of Opinion and Decision July 9, 1996. Filed February 7, 1997.

STATEMENT OF BASIS OF JURISDICTION IN SUPREME COURT

Plaintiff Doris Maher (hereinafter: "Plaintiff") is a resident of Nassau County, L.I., N.Y. The principal place of business of the Defendants: David Steinberg, Walter Jones and George Sutton is Long Island University (hereinafter: "LIU"), located in Nassau County.

Jurisdiction is conferred on the Supreme Court of the United States, Washington D.C. to review a Summary Order issued December 2, 1997 by the United States Court of Appeals For the Second Circuit, 40 Foley Square, New York, N.Y. (A-1) affirming the Judgment, Eastern District Court, Brooklyn, N.Y. adverse Decision filed July 29, 1996. A-2. Oral arguments by plaintiff pro se and Neil Sparber, Esq. for defendants were heard November 17, 1997. Plaintiff filed a Petition For Rehearing en banc dated December 8, 1997 in the Appeals Court December 9, 1997 and a Motion to Stay the Mandate dated December 15, 1997 until decisions are made on Rehearing en banc and Writ of Certiorari.

A Petition For Rehearing was denied by same Judges in error February 2, 1998

because plaintiff had filed a Petition For Rehearing en banc. To be given to correct panel of Judges. No answer yet.

The statutory provisions to confer on the Supreme Court are Title VII of Civil Rights Act of 1964 42 U.S.C. Sect. 2000e-5. Equitable and other relief is sought under 42 U.S.C. Sect. 2000e (g) and the Age Discrimination In Employment Act ("ADEA"), 29 U.S.C. Sect. 621-634. The United States Constitution Amendments VII and XIV.

CITATIONS OF STATUES AND
UNITED STATES CONSTITUTION AMENDMENTS

Age Discrimination In Employment Act of 1967 29 U.S.C.A. Section 621 et seq
Age Discrimination In Employment Act of 1967 29 U.S.C.A. Section 623 (a 1,2)
Age Discrimination In Employment Act of 1967 29 U.S.C.A. Section 623 (d)
Age Discrimination In Employment Act of 1976 29 U.S.C.A. Section 623 (f 2)
Age Discrimination In Employment Act of 1967 29 U.S.C.A. Section 623 (g 1)
Age Discrimination In Employment Act of 1967 29 U.S.C.A. Section 626 (b)
Age Discrimination In Employment Act of 1967 29 U.S.C.A. Section 626 (c 1,2)
Age Discrimination In Employment Act of 1967 29 U.S.C.A. Section 626 (d 2)
Age Discrimination In Employment Act of 1967 29 U.S.C.A. Section 626 (e 2)
Civil Rights Act of 1964 Title VII 42 U.S.C.A. Section 2000e-5
Civil Rights Act of 1964 Title VII 42 U.S.C.A. Section 2000-5 (e 1,2)
Civil Rights Act of 1964 Title VII 42 U.S.C.A. Section 2000-5 (g 1,2A)
Civil Rights Act of 1964 Title VII 42 U.S.C.A. Section 2000-5 (j)
United States Constitution Amendment VII
United States Constitution Amendment XIV

STATEMENT OF THE CASE

The basis for jurisdiction in the United States Eastern District Court, Uniondale, N.Y. where original complaint was filed by plaintiff pro se on July 31, 1992 with demand for Trial By Jury on alleged Age Discrimination, Unequal terms and conditions of employment, Retaliation citing a Consent Award dated June 24, 1988, Sex Discrimination, Harrassment, Conspiracy, Fraud, Damaging plaintiff's Professional Career and Health. After finding Robert Wagner, Esq. at a Senior Citizens Legal Assistance Clinic, an Amended Complaint was entered on December 11, 1992. A-3. After years of postponement by the defense, the case was moved to the Eastern District Court, Brooklyn, N.Y. and Judge Frederic Block, November 1994.

The jurisdiction in District Court was conferred by Title VII of Civil Rights Act of 1964 42 U.S.C. Sect. 2000e-5. Equitable and other relief was sought under 42 U.S.C. Sect. 2000-5 (g) and the ADEA , 29 U.S.C. Sect. 621-634. Judgment was entered July 29, 1996 (A-2) granting Defendants LIU Summary Judgment, July 9, 1996 dismissing case in entirety.

Judge Block denied plaintiff ten (10) days extension to obtain his twenty (20) pages Transcribed Opinion and Decision delivered on July 9, 1996 after about twenty (20) minutes of recess. A-4. Judge Block reviewed and edited the same and finally denied plaintiff's letter for extension dated August 8, 1996 for a Motion to Reconsider the Case signed September 13, 1996, entry September 20, 1996. Notice of Appeal was timely filed August 8, 1996, entry date August 21, 1996 by plaintiff pro se.

STATEMENT OF THE FACTS

The ultimate discriminatory acts by LIU, precipitating the second Human Rights and EEOC Charge on alleged Age and Sex Discrimination and Retaliation, timely filed November 15, 1990, occurred August and September 1990. The Right-to-Sue letter was issued by the EEOC on May 4, 1992. Plaintiff filed lawsuit on July 31, 1992. The time tolled for the Human Rights and EEOC was one (1) year and half. The Human Rights held plaintiff's case for one (1) year to November 1991. No Hearing was held, no attorney was provided for plaintiff and a ten (10) minute meeting was held. On the day before, the moderator admitted to plaintiff that the file had not been read and she knew nothing about the case. She continually left the room. The time was wasted. The final decision was the case was out of Jurisdiction. Dates and events were erroneous so plaintiff followed-up the EEOC Charge timely filed November 15, 1990.

Plaintiff was employed by LIU as a full time faculty member for eight years only. (1976-78 and 1984-90).

Plaintiff was sought out by LIU Administrators and Nurse Faculty to leave a nurse job in 1984 and come back to LIU to teach and get the CW Post Nursing Program National League For Nursing (NLN) Accreditation. Plaintiff had the highest rank, Associate Professor, highest salary of five nurse faculty (1984 $30,000 with increments $46,000 1990), highest nurse credential: Doctorate in Nursing Education, Masters of Education in Maternal-Child Nursing (Teachers College, Columbia University, NY) and Master of Science in Computer Education (LIU). Plaintiff was the senior untenured

faculty (1984-90) with seniority over the other four (4) untenured nurse faculty. The stage was set to eliminate a senior and tenure younger faculty.

After receiving NLN accreditation, plaintiff's contract was not renewed in April 1986. LIU administrators had violated plaintiff's contract and through Union grievance procedures of due process plaintiff's contract was renewed. LIU defendants excluded violations in facts of plaintiff's case in LIU's Argument and Briefs. George Sutton testified to LIU violations as only procedural but there was much more discrimination against the senior faculty member with seniority.

Plaintiff applied for tenure twice, once was denied, May 1987 and violations by LIU administrators were cited by the Union. The second time plaintiff applied for tenure February 1988, plaintiff was recommended for tenure by the Nursing Personnel Committee and the CW Post Faculty Personnel Committee. Excluded in LIU's facts, Argument and Brief.

Plaintiff had filed the first Human Rights and EEOC Charge on Age and Sex Discrimination on June 3, 1987 citing continual harassment in the workplace and unequal terms and conditions of employment with continual violations to plaintiff's contract and denial of tenure May 1987 by LIU male administrators.

The Consent Award was initiated by LIU to rid a senior from the workplace. A-5. George Sutton defendant testified and stated in his affidavit dated April 26, 1995 that LIU thought plaintiff would continue to grieve year after year so the Consent Award was contrived. Plaintiff was not retiring and could not do so because of economic reasons as head of the household. Both the Union and LIU knew that. Plaintiff should have

automatically received tenure after seven years of employment in academia. A-18.

There was only one Consent Award dated June 24, 1988. There was only one Hearing for the Consent Award on June 20, 1988. The first Hearing on April 22, 1988 was for denial of the first application for tenure, and violations to plaintiff's contract by administrators were cited by the Union. Plaintiff was recommended for tenure February, 1988. Then LIU initiated with the Consent Award and the second meeting set for June 20, 1988 was used for the Consent Award. LIU male Administrator, Walter Jones denied tenure right before the meeting in letter dated May 24, 1988, received June 6, 1988 coercive behavior, even after favorable annual review and promised by Dean Stephen Gross' letter to Richard Griffith, Chairperson of C.W. Post Faculty Personnel Committee.

The June 20, 1988 meeting for the Consent Award was incomplete because there was no recorder and Arbitrator Eisenberg complained that he could not listen and write at the same time. Ralph Knopf, President CW Post Collegial Federation (CWPCF) and plaintiff were asked to leave (A-11) the LIU law team Douglas Catalano, Esq. and George Sutton, defendant volunteered to help write the Arbitrator's notes. Ms. Litzky, New York State United Teachers New York State United Teachers (NYSUT) remained but did not have plaintiff's permission to act on her behalf to alter the material factors in the Consent Award. No notes of the Consent Award were read in plaintiff's present and plaintiff was not at any meeting on June 24, 1988. The Record is devoid of any notes to make this a fact and the Consent Award is too technically written to have been read in

this meeting as claimed by defendants.

After many requests to Ms. Litzky (NYSUT) to review the Consent Award, plaintiff received it on September 2, 1988 from Ms. Litzky (3 months later). Plaintiff protested the contents immediately to Ms. Litzky and George Sutton who promised to straighten it out. Plaintiff called Ms. Litzky back to tell her that George Sutton (LIU) promised to straighten out the Consent Award to plaintiff's understanding. Item #11 provides for Arbitration to settle disputes. All parties were bound to item #11. This was the lawful safety clause by the Arbitrator to stop unlawful acts. Many of the eleven items had never been heard or seen before by plaintiff. At the meeting, plaintiff objected to the word "retires" being put in the Consent Award. George Sutton urged plaintiff to withdraw the first Human Rights and EEOC Charge of June 3, 1987 on September 2, 1988 and then he would straighten out the Consent Award. (see Item #6). Plaintiff was bound to item #11 and expected Arbitration. Ralph Knopf (CWPCF) told plaintiff that he had requested Arbitration to George Sutton, defendant. LIU stalled continually misleading plaintiff and then in September 1990 blatantly refused Arbitration, refused any medical benefits,item #5 and COBRA, refused a job, refused unemployment insurance and any adjustment to error in pension agreement, item #4. These are discriminatory unlawful acts by LIU defendants.

Reasons for Granting the Writ

Plaintiff was lawfully denied Trial By Jury where plaintiff demanded Trial By Jury to Court and Counsel before Hearing on Consent Award. Plaintiff never gave up constitutional right to Trial By Jury at any time but right was lawfully denied by the Court on the Consent Award Hearing and on alleged Age and Sex Discrimination and Retaliation, violating United States Constitution Amendments VII and XIV, ADEA of 1967 and Civil Rights Act of 1964. Plaintiff swears to that.

After the Hearing had ended on July 9, 1996 and Judge Block, Eastern District Court returned in about twenty (20) minutes with Court's twenty (20) pages Opinion and Decision completed and ready to read, Court only then-raised plaintiff's serious Federal Question never raised during the Consent Award Hearing, negatively phrased about alleged Sex Discrimination in plaintiff's Complaints and Affidavit (A-3, A-6) on Record including a list of names of older female nurse teachers who plaintiff personnally knew. They were fired or let-go by LIU without Tenure or Continuing Appointment previous to 1990 and there were more females besides this group in the CW Post Nursing Department, LIU fired or let-go, known to plaintiff. It was too late for Judge Block to raise the alleged Sex Discrimination Question, he had already made the Court's decision on the case. This was a Court error.

This improper action of the Court proves there were preconceived biases and the case should not have been dismissed in entirety on the grounds that the Judge granted Summary Judgment because the Court had not examined the alleged Sex Discrimination Question during the

Hearing. An analysis of alleged Sex Discrimination must be included in the entire analysis of facts and not excluded from the totality of circumstances. It was unreasonable to then ask Counsel Wagner to agree with him after the Hearing had been concluded, recessed and Judge Block returned with twenty (20) pages of his Decision on page 2. A-4.

Plaintiff was denied a fair and impartial fact finding of crucial evidence on alleged Sex Discrimination where he had preconceived biases about Sex Discrimination and did not make a fair and lawful decision based on a totality of facts denying plaintiff equal protection and due process under the law.

The Question of Sex Discrimination was appealed and facts referred to in oral argument November 17, 1997 and was completely excluded from the Court Below Summary Order issued December 2. 1997. The Court Below never referred to the Civil Rights Act of 1964 Title VII in affirming the decision of the District Court and omitted plaintiff's claims to alleged Sex Discrimination and related Retaliation Title VII of Civil Rights Remedies of 1991 denied plaintiff inappropriately by the Court. The ADEA Statute of Limitations date of June 24, 1988 of the Consent Award, failed ADEA waiver, used by the Court Below to affirm the Opinion and Decision of the District Court, omitted alleged Sex Discrimination and related Retaliation in the Human Rights and EEOC Charge filed timely November 15, 1990 by plaintiff. The ultimate alleged Age and Sex Discrimination and Retaliation culpable and unlawful practices engaged in by three (3) male LIU defendants against a senior female, clearly occurred in

September 1990.

Plaintiff's understanding was the Hearing July 8 and 9, 1996 was not a trial as stated in the Court Below Summary Order issued December 2, 1997. The Court Below has denied plaintiff's constitutional rights. Plaintiff prays the United States Supreme Court uses the Court's Supervisory powers over the Court Below and honors plaintiff rights to a fair and impartial Trial By Jury. The Constitution framers gave this right to people because they wanted a jury to be the fact finder not one Judge or Magistrate. In principle, a jury group of twelve (12) people are better than one (1) person in fact-finding. Juries are free from preconceived biases and considered to be good fact-finding bodies and a way to avoid some of the improper actions experienced by people in cases of this sort.

The Court Below Summary Order states that plaintiff's then-counsel Wagner gave up rights to a Trial By Jury immediately before Judge Block began the matter of the Consent Award Hearing only on July 8, 1996. Ms. Litzky (NYSUT), witness and other people were present in the Open Court. Plaintiff never gave Counsel Wagner permission to give up rights to a jury trial. Judge Block or Counsel Wagner did not tell plaintiff that the Consent Award Hearing was a trial. In fact, Counsel Wagner told plaintiff that the Hearing was not a trial. Plaintiff was told by Mr. Wagner that the Hearing was only on the Consent Award, ordered by Judge Block and not on Age and Sex Discrimination and Retaliation. A-7.

On June 25, 1996, plaintiff was order by Judge Block to appear in Brooklyn Court in two hours or "suffer the consequences". Plaintiff had asked to

be excused because of grieving Mother's recent death. Plaintiff did appear in Open Court. None of the three (3) male LIU defendants were ordered to appear. Neil Sparber, Esq. defendants' Counsel appeared in Court. There was no oral argument (Civil Docket date error). Judge Block ordered plaintiff to attend a Settlement Conference with Visiting California Judge Real presiding, in Brooklyn Court on the next day, June 26, 1996 at 9 AM. Defendants were not ordered to appear and Counsel Sparber had no authority to settle the case. Judge Block ordered plaintiff to appear on July 8, 1996 with witnesses for a Hearing. (A-4 p.10 line 11). Defendants' Counsel asked Judge Block if the Hearing was on the Consent Award and he said "yes". Judge Block asked plaintiff during Open Court, with both Counsels, plaintiff's family and other people present, if plaintiff wanted a Jury Trial and plaintiff said "yes". Plaintiff told him that plaintiff demanded a jury trial in Court papers filed on record with the case on July 31, 1992 in the Eastern District Federal Court, Uniondale, N.Y. Judge Block responded to plaintiff in Open Court, just because you want a jury trial doesn't mean that you will get it. Plaintiff heard no more from Judge Block or Robert Wagner, Esq. on notifying the Judge any further on plaintiff's demand for a jury trial. Plaintiff's statement demanding a jury trial in Open Court to Judge Block before a Courtroom audience must be on Record June 25, 1996. A-7.

The next day June 26, 1996, plaintiff brought copies of plaintiff's Court papers with demand for a jury trial to the Settlement Conference scheduled for 9 AM in the Brooklyn Court. Before meeting with Visiting California Judge

Real, plaintiff gave copies of these papers to Robert Wagner, Esq., telling him again that plaintiff demanded a jury trial, but plaintiff had told him that many times before this day. He knew that and so did Judge Block. A-7.

Once again during the Conference, Judge Real affirmed plaintiff's demand for a jury trial in the presence of all. In fact, Neil Sparber, Esq. wanted to see the Court papers demanding a jury trial and Robert Wagner Esq. gave the papers to him to review. Plaintiff never gave up constitutional rights to a jury trial, plaintiff swears to that and Robert Wagner Esq., Neil Sparber, Esq. and Judge Block were informed of this demand in Open Court on June 25, 1996. A-7.

Additionally, a copy of the original Court papers on alleged Age and Sex Discrimination and Retaliation was given to Counsel Wagner and he gave the Court papers to Counsel Sparber to review. The United States Constitution Amendment VII states that plaintiff has a right to a Trial By Jury. Plaintiff was denied rights by Judge Frederic Block, Robert Wagner Esq. and Neil Sparber Esq. who concealed and denied intentionally plaintiff's right to a fair and impartial jury trial. There is no justice in a Court system, where Officers of the Court pray on innocent victims using Court verbiage to avoid a Trial By Jury and denying plaintiff's constitutional rights by treating plaintiff differently than other people where plaintiff made it known to all of these Court Officers, plaintiff's demand for a Jury Trial. It is noteworthy to note that only one (1) of the male LIU defendants were in Court for the Hearing, George Sutton, and all three (3) male LIU defendants were charged in plaintiff's lawsuit. This is

another biased act of the Court where these male defendants were charged with being responsible for the charges of alleged Age and Sex Discrimination and Retaliation against a senior female.

The Court denied plaintiff's rights to a fair and impartial jury trial. In plaintiff's case, evidence was in the Record: Complaints, Affidavits, Testimonies and Exhibits. Clearly, there was enough evidence of alleged Age and Sex Discrimination and Retaliation with genuine material facts and breach allegedly, in the eleven (11) items Consent Award, which were never examined excluded in the Consent Award Hearing as continual discriminatory unlawful practices of LIU. All the evidence disclosed triable issues to be examined by a jury trial. The Court's decision strained the ADEA of 1967 law. The Consent Award failed the ADEA waiver criteria including the Bormann v. AT&T Communications, Inc. 875 F.2d 399 (2nd Cir. 1989), cert. denied, 493 U.S. 924 (1989) Standard of eight (8) items used by the District Court excluded in the Court Below Decision when affirming the District Court Decision where triable genuine material issues and points of law were clearly overlooked by the Court Below. See Id. at 403; Coventry v. United States Steel Corp. 856 F.2d 514 (3rd Cir. 1988) and Cirillo v. Chemical Co., 826 F.2d 448, 454 (3rd Cir. 1988). Errors in law were committed by the Court which deprived plaintiff of rights to a fair jury trial.

Plaintiff's rights to Equal Protection, Contract Enforcement and Due Process were lawfully denied by the Court Below only enforcing retroactively two (2) items of the Consent Award dated June 24, 1988, failed ADEA waiver, to eliminate a senior female from the work force on September 1, 1990, who had seniority. These two (2) items are: item #1 plaintiff's performance of two (2) years of employment and item #7 plaintiff's waiver of claim to tenure and faculty rights where both items are conditional on performance of each of eleven (11) items of a conditional agreement, the Consent Award. The operation and effect of the Consent Award were dependent upon the performance of conditions and the existence of a supposed set of facts. A-5.

Plaintiff performed as demanded by LIU defendants in the Consent Award but LIU defendants did not. The conditional Consent Award date of June 24, 1988 is inappropriate to be used by the Court Below for the ADEA Statute of Limitation running time, as a matter of law. The running time is tolled until September 1, 1990 and the filing of the second Human Rights and EEOC Charge by plaintiff on alleged Age and Sex Discrimination and Retaliation was timely filed November 15, 1990. A timely EEOC charge of discrimination is not prerequisite of jurisdiction for bringing an action in Federal Court. Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 102 S.Ct. 1127 (1982). Similar to a statute of limitation, a timely charge is a requirement that is subject to waiver, estoppel and equitable tolling. Id. at 393.

The LIU motion for Summary Judgment was granted inappropriately by Judge Block excluding genuine material facts, breach and fraud allegedly by LIU in the Consent

Award. The Court Below excluded the other conditionnal nine (9) items of plaintiff's economic gains and losses, material factors breached and defrauded allegedly, in the Consent Award September 1990, in reckless disregard of the ADEA of 1967, Civil Rights Act of 1964 Title VII and the United States Constitution Amendments XIV and VII. In the Argus Inc. v. Eastman Kodak Co. 801 F.2d 38, 42 (2nd Cir. 1986), the record was reviewed and no genuine issue of fact was found. In plaintiff's case there is evidence of an eleven (11) items conditional Consent Award, signed by an Arbitrator, obviously containing genuine material facts excluded by the District Court and the Court Below only examining item #1 and #7 and not the alleged fraud and breach by LIU defendants in items #5 and #11. No reasonable trier of facts would exclude examining all eleven items when the decision was based on the conditional Consent Award. This did happen on July 8 and 9, 1996 and again on November 17, 1997 by both Courts.

The aggregate of reported cases in the Court Below Summary Order (A-1) does not cite a conditional agreement of eleven (11) items as the Consent Award where the ADEA law can be evidenced. The conditional Consent Award dated June 24, 1988 failed to pass the ADEA waiver criteria of the ADEA of 1967. The Bormann Id at 403 Standard used by the Eastern District Court to substitute the Consent Award dated June 24, 1988 for an ADEA waiver failed to pass the Standard of eight (8) items that was proved in plaintiff's Appeals Brief dated May 6, 1997. The Court Below then excluded the Bormann Id. case completely from the Summary Order's reported cases. This reason was that the District Court focused on the Bormann Id. case soley to try to prove the Consent Award was valid,

enforceable and lawful, and the Court failed to pass the eight (8) item Standard of the case. The body of jurisprudence or adjudged cases then-used by the Court Below do not interpret the ADEA law in final terms of a conditional Consent Award of eleven (11) items which LIU blatantly breached in September 1990. In the Bormann Id. at 403, the Court states, "... the need to examine carefully any situation ...an older worker bargains away the statutory rights to be free from age discrimination." Plaintiff was coerced and suffered economic duress and not free of Age and Sex Discrimination and Retaliation by LIU's three (3) male defendants and if plaintiff were a male instead of a older female, these males would not have treated plaintiff in such discriminatory ways.

Additionally, in Delaware State College v. Ricks, 449 U.S. 250, 258 101 S.Ct. 489 (1980), the United States Supreme Court urges, "The application of the general principles...must be made on a case-by-case basis." The Court Below overlooked the conditions of the novel Consent Award, breached by LIU defendants. There was no conditional eleven (11) items Consent Award breached and defrauded allegedly by Delaware College.

The Consent Award was unenforceable. Plaintiff tried to enforce the conditions of expected employee benefits of Awards and Arbitration. LIU refused to comply with item #5, Blue Cross Blue Shield primary hospital insurance and Major Medical secondary insurance and item #11 Arbitration to settle disputes in the Consent Award. Defendants were estopped in items #5 and #11 and are liable for breaking their promises in the Consent Award because plaintiff relied on the employee awards. All parties were bound

to the conditions in eleven items of the Consent Award not only items #1 and #7.

In Bormann, Id. Judge Brieant, United States District Court for the Southern District of New York, gave full discovery to the plaintiffs, Bormann et al, on the issue of the enforceability of the separation agreement and release used as an ADEA waiver. But, Judge Block's use of the Bormann, Id. in his Decision did not prove the enforceability of the Consent Award although he made inferences in his Decision: "...if the consent Award is enforceable and lawful,...and if the Consent Award is unenforceable..." (A-4, Transcribed Opinion and Decision July 9, 1996, Pp. 8-9). These inferences were never resolved by Judge Block. He noted, "...if the Consent Award is unenforceable, then the claim accrued in August 1990... would be timely brought." (A-4,Transcribed Decision July 9, 1996, Pp. 8-9). Judge Block intented to exclude "and unlawful" when referring to "unenforceability". The reasons are the Consent Award as written is unenforceable and unlawful. Judge Block decided the Consent Award was valid and lawful and did not prove his inference of enforceability of the Consent Award. This action deprived plaintiff of a fair and impartial fact finding by the trier of facts on inferences of enforceability.A-18. Item #5 is fraud and unenforceable. LIU refused plaintiff item #5, September 1, 1990 and item #11 Arbitration. The Court Below overlooked Sex Discrimination, points of ADEA law and enforceability, and only enforced items #1 and #7 for LIU defendants which prevents granting LIU Summary Judgment and dismissal of plaintiff's alleged Age and Sex Discrimination and Retaliation lawsuit.

Judge Brieant, Southern District Court, N.Y., in the Bormann Id. case examined

genuine issues of material facts before granting Summary Judgment. But Judge Block of the Eastern District Court overlooked plaintiff's gains of Awards and losses which LIU had breached September 1, 1990 in the conditional Consent Award. Clearly, George Sutton, defendant misled plaintiff by leading plaintiff to expect that LIU would participate in Arbitration, item #11 of the Consent Award to settle disputes. The Statute of limitations was not intended to run against a plaintiff unaware that a cause of action existed. Cerbone v. International Garment Workers' Union, 768 F.2d. 45 (2nd Cir. 1985). The equitable principle should be applied when employer's behavior misleads the employee to make the employee unaware of cause of action. Id. LIU and the CWPCF were bound to all eleven (11) items of the conditional Consent Award. Plaintiff as well as Arbitrator Eisenberg (deceased) expected that LIU defendants would act in good faith and participate in Arbitration and award plaintiff's expected employee benefits in the conditional Consent Award. The running time is tolled under equitable tolling when plaintiff was unaware that she had a claim for age discrimination. Seedman v. Alexander's Inc., 683 F. Supp. at 926. LIU did not comply and unlawfully discriminated against plaintiff in September 1990, precipitating the second Human Rights and EEOC Charge of alleged Age and Sex Discrimination and Retaliation timely filed November 15, 1990.

In Miller v. International Telephone & Telegraph Corp., 755 F.2d 21 (1985), time can't be tolled unless employer misled employee, denied rights in "extraordinary way" or asserted rights"...in the wrong forum,...tolling of time bar...permitted as a matter of fairness. ADEA of 67, & 7 (e)(1,2) as amended, 29 U.S.C.A. & 626

(e)(1,2)." Item #11 provided for an Arbitration Hearing (Forum) to settle disputes. George Sutton, defendant, continued his theme of Arbitration to settle disputes and in his letter dated March 7, 1990. A-8. Plaintiff expected Arbitration as clearly stated in item #11. This is the extraordinary circumstances where all parties were bound, as a matter of law. Then September 1, 1990, LIU blatantly refused Arbitration. Plaintiff exhausted all attempts to enforce the Agreement and could not, then plaintiff filed the second Human Rights and EEOC Charge on alleged Age and Sex Discrimination and Retaliation timely filed November 15, 1990 against the LIU three (3) male defendants. The principle of equitable estoppel should be applied if an employee misrepresented the length of the filing period or in another way "lulled the plaintiff into believing that it was not necessary for him to commence litigation." Cerbone, 768 F.2d at 50; Seedman, 683 F. Supp. at 926.

The Court Below treated plaintiff less than equal to defendants by denying plaintiff's gains in items of genuine material factors in the Consent Award that plaintiff, a senior female had looked forward to with personal joy and security in hospital and major medical insurance for a life-time. These items were breached by three (3) male LIU defendants who would not comply to the Consent Award on September 1, 1990 and violated the ADEA of 1967, Civil Rights Act of 1964 Title VII and the United States Constitution Amendments XIV and VII.

The Court Below violated plaintiff's constitutional rights by arbitrarily and unreasonably treating plaintiff differently than other people under the law. The Summary Order barred personal claims and rights from finality, equal protection,

contract enforcement and due process of lawful resolution of the whole Consent Award, as a matter of law. A-1.

Plaintiff has been denied redress of wrongs, equal protection in the enjoyment of personal rights, similar treatment under the law, contract enforcement and due process of law. The economic gains and losses, and total costs of genuine material factors to plaintiff are about $530,386 in January 1998 excluding plaintiff's suffering of personal damages to: teaching career, economic duress and health.

The economic gains and losses, and genuine material factors in September 1990 are LIU wrongfully refused plaintiff item #5 of Consent Award Blue Cross Blue Shield primary hospital insurance and Major Medical secondary insurance. ($16,700 cost January 1998). LIU wrongfully refused plaintiff any medical insurance violating Federal law (COBRA) to Extend Group Medical Insurance. (Benefit). LIU wrongfully never returned any of plaintiff's personal belongings stripped from faculty office without warning before contract expired. (Disparate Treatment and Cost $500). LIU wrongfully prevented employee benefit of unemployment insurance. (Cost $7,800). LIU wrongfully cancelled plaintiff's group life insurance policy. (Cost $85,000). LIU wrongfully did not comply to plaintiff's understanding of item #4, pension contribution by LIU. It was plaintiff's understanding that plaintiff would receive 16 1/2 % over what plaintiff was already earning. Plaintiff earned 16 % (11 % LIU plus 5 % plaintiff's salary) all faculty earned 16 % . All faculty got 1/2% more in 1991. LIU should have paid $4,386 more in fall of 1989, employee benefit, protested to personnel and Walter Jones by letter dated January 23, 1990 but no answer. A-9. LIU wrongfully fired plaintiff September 1,

1990 and refused to rehire plaintiff. Walter Jones, defendant told plaintiff that plaintiff was sixty-five (65) and had to retire. He said that Medicare was enough insurance for plaintiff. (Disparate treatment and Cost of faculty salary $46,000 retroactive January 1998, about $420,000). LIU hired a younger nurse candidate, Ms. Sandra Ceslowitz on September 1, 1990 for less salary, lower rank, less experience and less education, and less qualifications than plaintiff. (Disparate treatment). LIU recommended and then tenured a younger nurse faculty member Ms. Theodora Grauer for less salary, not recommended by the same Nursing Personnel Committee February 1988 at the sametime plaintiff was recommended for tenure in the CW Post Nursing Department. (Disparate treatment). LIU wrongfully refused Arbitration to settle disputes. (item #11).

George Sutton misled plaintiff by agreeing with item #11 and then refusing Arbitration. Equitable tolling should be applied to relieve a plaintiff actively misled by an employer or who was prevented someway from timely utilizing their personal rights, this being held as a matter of fairness to client. Cerbone, 768 F.2d at 49; Miller, 755 F.2d at 20. Plaintiff expected the Consent Award would be straighten out as George Sutton told plaintiff because of item #11 in the Consent Award. LIU wrongfully denied senior nurse teacher with Doctorate in Nursing Education to teach nursing but allowed younger less qualified nurse teachers to teach plaintiff's nursing courses. (Item #2, Disparate treatment). Plaintiff was loaned to teach Computer Education. Item #3, plaintiff was no longer subject to violations by Administration to faculty contract by an annual review in 1989. LIU wrongfully

demanded in item #6, plaintiff withdraw plaintiff's first Human Rights and EEOC Charge v. LIU dated June 3, 1987 on alleged Age and Sex Discrimination. (Disparate treatment). Item #10 was added by LIU's law team and was never heard or seen by plaintiff until September 1988 and protested by plaintiff. Item #9 was added and never heard or seen by plaintiff until September 1988 excusing LIU of any wrong doing but can not protect LIU from breaching the Consent Award and defrauding plaintiff thus breaking the Federal law and N.Y. State Law. This item was never discussed in the Hearing and excluded by the Courts.

This alleged Age and Sex Discrimination and Retaliation against plaintiff, are in violation of Civil Rights Act 1964, 42 U.S.C.A. Sec. 2000 et seq (Title VII) and ADEA of 1967, 29 U.S.C.A. Sec. 621 et seq. New York General Obligations Law Sec. 15-501 (McKinney's 1989), LIU & CWPCF Agreement 1985-88 and United States Constitution Amendments VII and XIV.

The Court Below Summary Order relates that LIU was permitted to fire plaintiff and had been attempting to do so for some time. The Court Below overlooked the reasons why LIU was unable to do so because of plaintiff's faculty rights to due process, the grieving process including evidence of exhibits, witnesses and testimonies. According to the Collective Bargaining Agreement between CW Post Collegial Federation and LIU, the grieving process and Arbitration are the normal route in academia to prove faculty contract rights were violated by LIU and plaintiff's faculty rights were violated by LIU Administration. A-1.

The phaseology used by the Court, "The University had been attempting to fire

Maher for sometime and was permitted.", excluded points of the ADEA and Civil Rights laws, statutes enacted by Congress to protect plaintiff and prevent continual willful violations of age and sex discrimination violating senior faculty member's contract. The Courts denied plaintiff equal protection and due process by not examining all evidence on record and concealing genuine material facts in the Consent Award and by making a Decision on less than all the evidence on record including Complaint of Sex Discrimination. The Court Below Summary Order (A-1) excluded the charge of Sex Discrimination completely. The Court Below made a Decision without even rational scrutiny in reckless disregard of the ADEA and Civil Rights statutes where no employee should be fired without equal protection and due process.

The Court Below relates that there is no clear error in item #1, plaintiff's two (2) years of employment as written in the Consent Award. But the Court Below overlooked that Arbitrator Eisenberg (deceased) signed the total of eleven (11) items in the Consent Award, not only item #1 which is conditional to the other ten (10) items. The case law used by the Court Below failed to use any Consent Award for precedential authority. There are plaintiff Awards which are personal claims and rights signed in law by an Arbitrator.

The Court Below grants firing "AT WILL" by an employer, without due process of law. There has been alleged Sex Discrimination in LIU's past employment practices not examined by the Court in plaintiff's Complaint and affidavit. A-3, A-6, A-7.

The Court Below stated that plaintiff testified "...that it was her 'hope' that she would be reappointed...". (A-10, plaintiff's testimony Pp.64-65). The

question asked of plaintiff was referring to Continuing Appointment. Plaintiff said "Yes. That is my hopes." Plaintiff's answer was based on Continuing Appointment if the Nursing Department was viable and not closing (George Sutton told plaintiff on June 20, 1988 that the Nursing Department was closing, to coerce plaintiff into the Consent Award) and if the faculty-student ratio in the Computer Education Department that plaintiff was on loan, was good. There was an opening.A-10.

The Consent Award failed to pass the ADEA of 1967 criteria for a legal ADEA waiver from employment. The ADEA criteria are: 1. the ADEA waiver may not include rights and claims that arise after the date the waiver is signed. Item #5 gives plaintiff rights to Blue Cross Blue Shield primary Hospital insurance and Major Medical secondary insurance September 1, 1990. 2. in an ADEA waiver, the employee must be advised, in writing, to consult with an attorney prior to signing the agreement. This never happened. Plaintiff was never advised, in writing or otherwise, to consult an attorney and plaintiff never signed the Consent Award. 3. in an ADEA waiver, the employee must be given at least twenty-one (21) days to consider the agreement before signing it. This never happened. Plaintiff was not given the Consent Award to review until about three (3) months later in September 1988, after many requests to Ms. Litzky (NYSUT). Clearly, plaintiff never signed it. Arbitrator Eisenberg signed it dated June 24, 1988, not plaintiff. Plaintiff was not at any meeting on June 24, 1988. Plaintiff was not given the Consent Award to review before it was issued. 4. in an ADEA waiver the employee must be able to revoke the agreement within seven (7) days of signing the agreement. Plaintiff never

signed the Consent Award and never received the final written form from Ms.Litzky until September 1988, protested it and never agreed with the final written form. According to the ADEA criteria for an ADEA legal waiver, the conditional Consent Award dated June 24, 1988 failed to pass all four (4) of the ADEA criteria. (AARP-The Age Discrimination in Employment Act Guarantees You Certain Rights,Pp.10-11).

Plaintiff could not have known or predicted LIU would violate Federal laws and New York General Obligation law in September 1990 by unlawful practice of non-compliance of items #5 and #11 of the Consent Award. This did happen.

Arbitrator Eisenberg did not know or predict LIU would unlawfully not comply to the Consent Award in September 1990 when he signed the Consent Award dated June 24, 1988. Arbitrator Eisenberg was a member of the American Arbitrators Association ("AAA"). He was bound by the AAA rules and regulations and plaintiff believes a person with integrity. Unfortunately, he trusted the LIU law team and the CW Post Collegial Federation to comply and perform eleven (11) items of the Consent Award dated June 24, 1988, in September 1990 or he could not have signed the Consent Award. The Arbitrator and plaintiff did not know that LIU would not comply. The limitation periods are subject to equitable tolling and estoppel. Dillmann v. Engineering, Inc., 784 F.2d. 57 (2nd Cir.1986).

The Court Below overlooked testimonial evidence in the Consent Award Hearing July 8 and 9, 1996 as follows: Ms. Litzky (NYSUT) testified and admits knowing that plaintiff did not receive medical insurance September 1990. Plaintiff did not know until LIU refused medical insurance September 1990. Then Ms. Litzky admits to no Blue Cross-Blue Shield

(Primary Hospital Insurance). Plaintiff could not enforce it. But, Item #5 of the Consent Award states Blue Cross-Blue Shield and Major Medical. This is fraud by LIU. Ms. Litzky admits to fraud and breach. But, there is Blue Cross Blue Shield only if currently employed. Medical coverage went from $250,000 to $1 million 1988-1991. Then Ms. Litzky admits to putting the word "retires" in item #5 of the Consent Award without plaintiff's authority. Ms. Litzky admits that plaintiff objected to the word "retires". A-11, A-12, A-13, A-14. Ms. Litzky states in her letter that LIU told her that LIU would not agree to guarantee anymore than two (2) years of employment. LIU did not tell plaintiff that. But whether it was two (2) or three (3) years, George Sutton and Ms. Litzky both knew that plaintiff would not be at LIU for ten years in September 1990 as stated in item #5 of the Consent Award. Plaintiff was at LIU only eight (8) years on September 1, 1990. This is fraud in item #5.

George Sutton testified July 9, 1996 and admits to plaintiff objecting to the word "retires". LIU refused Arbitration to clarify, item #11. (A-18, A-8). He continues in his letter, the theme of Arbitration to settle disputes. LIU refused Arbitration. (A-15: Richard Rapport's, Esq. letters to David Steinberg (President LIU, defendant, August 1990 and September 1990). He refused to answer and LIU refused arbitration. The National Labor Relations Board ("NLRB") understood by plaintiff's letter, September 21, 1990, the medical issues unresolved. A-16. The NLRB related that the Union was willing to go to Arbitration to clarify. But, LIU backed-out. (A-12: letter to James Gaspari (NYSUT) dated August 15, 1990). George Sutton states in his affidavit February 24,

1995 that plaintiff was at negotiating meetings with Ralph Knopf (CWPCF), Ms. Litzky and him. They shuttled back and forth to plaintiff. He belies. Then George Sutton changes and reverses his affidavit in his testimony and admits that plaintiff was not there and gives Ms. Litzky authority. Then he admits negotiating on the telephone with Ms. Litzky then he admits that he can't recall meetings. Ms. Litzky testifies that she would not do anything without Ralph Knopf. But, Ralph Knopf told plaintiff that the Consent Award was fraud and Ms. Litzky did not know. These are three (3) conflicting testimonies and affidavits. A-17, A-18.

George Sutton testified that plaintiff had to sign that plaintiff had retired from LIU September 1, 1990 to get Blue Cross Blue Shield (Primary Hospital Insurance) and Major Medical (Secondary Insurance). He belies. THAT IS FRAUD and the Court agreed with him. (item #5 Consent Award). A-5,A-18. Plaintiff was not a "Retiree" of LIU September 1, 1990. They knew that. Ms. Litzky testified and admits LIU would not use the Consent Award against plaintiff. But LIU did September 1, 1990, plaintiff was "fired" September 1, 1990 in reckless disregard of the ADEA of 1967. LIU breached the Consent Award and defrauded plaintiff and refused Arbitratinn September 1990. (Cost to plaintiff $530,000). A-11.

George Sutton testified and stated in his affidavit April 25, 1995 that LIU knew plaintiff would continue to grieve year after year so LIU contrived the Consent Award dated June 24, 1988. A-11. LIU knew plaintiff was not retiring. This was LIU's scheme to get rid of a senior, oldest nursing faculty member (all of five (5)) in the CW Post Nursing Department in 1990. George Sutton testified that the CW Post Nursing Department was still in trouble.

He continues his coercive theme as in the June 20, 1988 Consent Award meeting with Arbitrator. He belies. It is public information the Nursing Department has two (2) Masters Nurse programs and Baccaluareate programs in Brunkville and Southhampton, LIU. Walter Jones states in a LIU publication that he had openings for one hundred-fifty (150) faculty positions at that time. Letters to plaintiff from LIU relate that LIU is in great financial state at this time and expanding areas.

Ms. Litzky testified that LIU would not preclude plaintiff from a job September 1, 1990. But in the meeting June 20, 1988 for the Consent Award, she used the word "opening" in September 1, 1990, omitted in the Consent Award, item #1. However, LIU refused plaintiff a job and there was an opening. (Disparate treatment). A-11,A-11.

LIU got Federal grants worth millions of dollars. The Health Sciences got $80,000 for Gerontology - study of the aged. But refused plaintiff a senior a job September 1, 1990. (Disparate treatment).

George Sutton testified and admits he would like to rewrite the Consent Award. He continues his theme of clarification but refused Arbitration to settle the material factors of the Consent Award. A-18, A-8.

An alternative argument then is the United States Supreme Court must order LIU to comply and give plaintiff the Awards of the Consent Award that are rightfully and legally owed to plaintiff by Arbitrator Eisenberg's signature on the Consent Award dated June 24, 1988. Awards of personal claims and rights that plaintiff had looked forward to with joy on September 1, 1990 but LIU refused. Plaintiff was unable to enforce the Consent Award, September 1990. Since the Court Below has lawfully enforced items #1 and #7 of the Consent Award dated June 24, 1988 retroactively in the Summary

Order and affirmed the Court of first instance's Decision dated July 9, 1996 then the Court Below has automatically lawfully enforced retroactively the remaining awards of plaintiff in the Consent Award. The Court can not deny plaintiff personal rights and equality of rights. Plaintiff is entitled to item #5 Blue Cross Blue Shield primary hospital insurance and Major Medical worth $1 million for plaintiff's life-time.

LIU owes plaintiff $16,700 cost to plaintiff for Blue Cross Blue Shield primary hospital insurance premiums retroactive to January 1998 plus future premium payments of medical coverage. Plaintiff is entitled to be reimbursed for personal belongings that LIU stripped plaintiff's office of and never returned worth $500.00 or LIU should return them to plaintiff. LIU owes plaintiff $7,800 unemployment insurance for 26 weeks because according to the Consent Award, plaintiff was LIU's retiree and plaintiff was not. (see item #5). The Consent Award, item #4 pension agreement should be $4386.00 more. The total cost to plaintiff is about $30,000 excluding salary, life insurance and personal damages: to teaching career, economic duress and health.

----------CONCLUSION----------

For all the foregoing reasons, it is respectfully submitted that this Petition For A Writ Of Certiorari should be granted.

Respectfully Submitted Doris Maher pro se

Date February 23,1998 Signed: Doris Maher pro se